

Application No.: 10-772,752  
Amendment dated: November 23, 2009  
Reply to Office Action of June 22, 2009  
Attorney Docket No.: 22176.28 (HFW-14460)

### REMARKS/ARGUMENTS

Claims 1-15 are pending in this application.

Claims 7-10 and 12-14 are withdrawn.

Claims 1-3, 5-6, 11, and 15 have been amended as indicated hereinabove.

Claims 1-6, 11, and 15 had been rejected under 35 U.S.C. § 112, second paragraph. Applicant believes that the Claims as amended are now in compliance with 35 U.S.C. § 112, second paragraph.

Claims 1-3, 5-6, 11, and 15 had been rejected under 35 U.S.C. § 103(a) over Rice (U.S. Patent No. 5,396,839). Claims 1-6 and 11 had been rejected under 35 U.S.C. § 103(a) over Waitts (U.S. Patent No. 5,834,096) in view of Rice. These rejections are respectfully traversed for the following reasons.

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.<sup>1</sup> The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.<sup>2</sup>

Claims 1-6, 11, and 15, as amended, comprise pixels or non-overlapping panels; each pixel or panel corresponding to or is tinted with one of primary colors and diffracts incoming light at angles different for each panel; and at least some panels correspond to or are tinted with different colors.

In other words, according to Claims 1-6, 11, and 15, each diffraction angle corresponds to a single-color pixels or a panel (while generally the same color may correspond to several diffraction angles).

<sup>1</sup> *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)

<sup>2</sup> *Manual of Patent Examining Procedure* § 2142 (8th ed. rev. 7 July 2008)

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Rice discloses printing a plurality of colored dots on a surface on which a diffraction grating is subsequently embossed. There is no mention of each diffraction angle appearing only on identically-colored surfaces in Rice.

Waitts discloses embossing a tinted layer with a diffraction grating and subsequent printing on the layer. There is no mention of each diffraction angle appearing only on the identically colored surfaces in Waitts.

No *prima facie* case supporting conclusion of obviousness of pixels or non-overlapping panels, each pixel or panel corresponding to or being tinted with one of primary colors and diffracts incoming light at angles different for each panel, at least some pixels or panels corresponding to or being tinted with different colors, has been made in the pending Office Action. Therefore, Claims 1-6, 11, and 15 are patentable over Rice and Waitts under 35 U.S.C. § 103(a) and should be allowed.

Claim 4 had been rejected under 35 U.S.C. § 103(a) over Rice, and further in view of Mallik et al. (U.S. Patent No. 5,085,514). This rejection is respectfully traversed for the following reasons.

If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious.<sup>3</sup>

Claim 4 depends on Claim 1, which, as explained above, is patentable and, therefore, non-obvious. Therefore, Claim 4 is patentable over Rice and Mallik under 35 U.S.C. § 103(a) and should be allowed.

It is believed that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited in this case. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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<sup>3</sup> *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

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## HOUSTON ELISEEVA LLP

By Maria M. Eliseeva/  
Maria M. Eliseeva  
Registration No.: 43,328  
Tel.: 781 863 9991  
Fax: 781 863 9931

4 Militia Drive, Suite 4  
Lexington, Massachusetts 02421-4705  
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